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10/670,623	09/25/2003	Gregory Kintzele	5044	6733
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EXAMINER				
KING, ANITA M				
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**MAILED**

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/670,623  
Filing Date: September 25, 2003  
Appellant(s): KINTZELE ET AL.

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Ellen Reilly  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed November 7, 2005 appealing from the Office action mailed February 22, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2,819,923	ANDERSON	1-1958
4,353,544	DALMASO	3-1981
4,095,316	GABRIEL	6-1978
6,029,870	GIACONA, III	2-2000

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 5-7, 10, 12, 13, 15, and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 2,819,923 to Anderson in view of U.S. Patent 4,253,544 to Dalmaso. Anderson discloses an article suspension device (5), comprising: encircling means (9) for surrounding an object (7); an adjustable elastic loop (10); a single length of cord (8) having a first end secured to the elastic loop and a second end secured to the encircling means; wherein the encircling means comprises a free end portion releasably secured to a base portion of the encircling means; wherein the elastic loop is formed as a continuation of the cord; wherein the elastic loop includes means for adjusting (12) a length of the loop and the cord; wherein the adjusting means is defined by a body member having a first material-receiving slot (13) and a second material-receiving slot (14), the first material-receiving slot extending along a parallel axis with the second material-receiving slot; and wherein the means (12) for releasably engaging the cord includes a clamping member (15) for securely engaging a length of the cord.

Anderson discloses the claimed invention except for the limitation of the cord being elastic. The cord in Anderson is constructed of a flexible material such as steel wire cable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the material of the cord in Anderson to have been constructed of an elastic material for the purpose of providing an alternative, flexible, mechanically equivalent material for the cord based on the materials suitability

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for the intended use and since such a modification would not have produced any unexpected results.

Anderson discloses the claimed invention except for the limitation of a cover extending between the first end and the second end of the cord. Dalmaso teaches an article suspension device (10) comprising a single length of cord (14) having a first end secured to a loop and a second end, the cord including a cover (16) extending between the first end and the second end of the cord in outer surrounding relation to the cord, the cover being stretchable a predetermined distance between a retracted position and an extended position in response to stretching the cord, and wherein the cover includes a fabric sleeve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Anderson to have included the cover as taught by Dalmaso for the purpose of providing a means for providing shock absorption to the device to dissipate the shock forces generated by a rapidly decelerating object.

Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson combined with Dalmaso and in further view of U.S. Patent 4,095,316 to Gabriel. Anderson combined with Dalmaso disclose the claimed invention except for the limitation of the encircling means being a carabiner. Gabriel teaches that it is known to have a carabiner for securing an object therein. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the encircling means in Anderson combined with Dalmaso to have included a carabiner as taught by Gabriel for the purpose of providing an alternative means for attaching the device to a stationary object having a different size and shape than that of a rod or bar.

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Claims 3, 8, 9, 14, and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson combined with Dalmaso and in further view of U.S. Patent 6,029,870 to Giacona, III, hereinafter, Giacona. Anderson combined with Dalmaso disclose the claimed invention except for the limitations of the base portion of the encircling means having a snap fastener or releasable handle and the adjusting means having a slidable gate. Giacona teaches an article suspension device having an encircling means (11) for surrounding an object and including a free end portion and a base portion, wherein the free end portion is secured to the base portion by a snap fastener or releasable handle (14), and elastic loop (26) including a slidable gate (39) normally urged to a closed position by a spring member (42), and wherein a combination of the slidable gate in an open position and the spring form an unobstructed passage through which the length of a cord (27) may pass. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in Anderson combined with Dalmaso to have included the snap fastener and adjusting means as taught by Giacona for the purpose of providing alternative, mechanically equivalent, and more efficient means for attaching the base portion and the free end portion of the encircling means together to form a loop and for easily adjusting the size of the elastic loop for accommodating objects having various sizes and shapes.

#### **(10) Response to Argument**

In response to appellant's argument that Anderson is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant

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was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Anderson reference is related to a sling having a encircling means at one end of a cable for attaching to a support and a loop at a opposite second end for attaching to an object which will be suspended from the support, such as appellant's claimed invention.

In response to appellant's argument that Anderson is used for securely suspending a carcass from a tree for cleaning and gutting, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In response to appellant's argument that there is not motivation or teaching in Anderson to substitute an elastic cord, the cable in Anderson is somewhat elastic and is flexible, it is generally known that metals, such as steel wire, have some degree of elasticity and thus, it would have been obvious to one having ordinary skill in the art to have modified the material of the loop in Anderson to have been an elastic cord. Further the invention in Anderson would still work to employ the intended use since the degree of elasticity is neither presented in appellant's specification nor claimed invention.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Dalmaso teaches a device having an encircling portion at a first end for attaching to the waist of an individual and a second end for attaching to an anchor, wherein a cover is provided over a tensile load bearing core and the cover being longer in length than the core. The cover aids in providing a shock absorbing means to the device when subjected to opposing forces, such as the device in Anderson. This combination allows for a means for providing shock absorption to the device in Anderson to dissipate the shock forces generated by a rapidly decelerating object.

In response to appellant's argument that there is a clear lack of motivation to combine the cover as taught by Dalmaso with the device in Anderson, because when dealing with a carcass, the cover would become covered with blood and other foreign matter and would not be practical in any way, since there are not any critical characteristics provided for the appellant's cover and the blood or foreign matter can be washed from the cover, the cover in Dalmaso could be made of a highly absorbent material wherein the cord covered by the cover may be protected from rusting or deterioration caused by the blood or other foreign matter absorbed by the cover.

In response to appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was



within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to appellant's argument that Anderson has a small permanent loop, the loop in Anderson can be adjusted and locked into a permanent loop using an adjustable clamp. The diameter of the loop is irrelevant, since the size of the object being supported is not claimed and thus, the examiner believes that Anderson is fully capable of meeting this limitation.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gabriel is used to teach a carabiner only, appellant's claimed invention merely states the encircling means comprises a carabiner, there is no criticality provided in the claim for this feature other than it is part of the encircling means and based on appellant's drawings (Fig. 2), the carabiner is merely attached to the encircling means. It would have been obvious to one having ordinary skill in the art the time the invention was made to have modified Anderson combined with Dalmaso to have included the carabiner for the purpose of providing a means to clip the device to another object for storage or transporting.

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In response to appellant's argument that there is no motivation or teaching in Anderson to suggest utilization of a snap fastener or releasable handle as taught by Giacoma, III, firstly, appellant's snap fastener is positioned with the encircling means and not the adjustable loop, and secondly, Giacoma is used to teach an alternative means for clamping the adjustable loop at a desired position and to modify the clamping means in Anderson with the clamping means taught by Giacoma is obvious since both clamping means employ the same purpose. Further, Giacoma is only use to teach the slidable member and need not teach the limitations of the cord, however, the reference does indeed teach a single length of cord (27) where the slidable member is used.



**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Anita M. King  
Primary Examiner  
Art Unit 3632  
February 2, 2006

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